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Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes on his mission to DENMARK and GREENLAND: comments by Denmark*

* Reproduced as received.

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Comments to the draft report of the Special Rapporteur following the visit to Denmark and Greenland in 2017.

Denmark would like to thank the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes for the opportunity to provide comments to the draft report following the visit to Denmark and Greenland in 2017. The following comments consist of a contribution from the Danish Government after consultation with the Government of Greenland as well as a contribution from the Government of Greenland as attached.

The comments from the Danish Government are limited to matters of a factual character. Other comments to the draft text and recommendations will be reserved for later occasions.

The Danish Government look forward to continuing the cooperation with the Special Rapporteur on these issues.

Re paragraph 37:

In footnote 39, the following text could be added: "… and the combined maximum annual ship recycling volume of those countries must, during the preceding 10 years, constitute not less than 3 per cent of their combined merchant shipping tonnage".

Re paragraph 49:

The Greenland Self-Government arrangement could in our view be described in more detail with a view to ensuring a correct factual presentation of the arrangement.

In the proposed text below, please find suggestions for a more elaborate description:

"In 1953, Greenland became an integral part of the Danish Realm. According to Article 28 of the Danish Constitution, Greenland is to be represented by two members in the Danish Parliament. Gradually over the following decades Greenland expanded its autonomy in all Governance areas. The Greenland Self-Government's legal and institutional autonomy is currently provided by the Act on Greenland Self-Government of 21 June 2009 (which expanded the powers previously enacted in the Home Rule act of 1978 that came into force in 1979).[1] Pursuant to the Greenland Home Rule Act, Greenland has already assumed legislative and administrative re ponsibility in a substantial number of fields that affect the daily lives of Greenlandic citizens, including public finances, social welfare, education, health care and the environment area (apart from marine environment).

The Act on Greenland Self-Government recognises that the people of Greenland is a people pursuant to international law with the right to self-determination; describes the fields of responsibility and competences that Greenland can assume (e.g. natural resources and justice affairs); introduces a new economic arrangement which entails that the block grant is fixed to DKK 3,8 billion (approximately USD 596 million) and that the Self-Government take over responsibility for the financing of the expenditure related to the attendance of fields taken over and describes Greenland's access to independence. A few areas such as the constitution, foreign, security and defence policy and foreign exchange and monetary policy cannot be assumed by the Greenland Self Government due to the Danish Constitution. The Self-Government Act contains a comprehensive set of rules and regulations concerning cooperation between the Danish Government and the Greenland Government. E.g. Greenland has to be consulted before the ratification of international agreements. Greenland has established representations at the Kingdoms Embassies in countries of specific interest."

[1] Cf. UN General Assembly, doc. (A/64/676).

Re paragraph 50:

Not all human rights treaties applying to Denmark also apply to Greenland. See Denmark's Common Core document for an overview. It would be correct to state that "Most human rights treaties apply to Greenland. For the human rights treaties applying to Greenland, the Greenland Government provides reports…"

Re paragraph 51:

In the first sentence it is stated that Greenland recognizes a number of international conventions. In our view, it would be more correct to state that a number of international environment conventions including the Basel Convention *apply* to Greenland.

Further, the paragraph states that Greenland has not requested for Denmark to recognize its adherence to the Aarhus Convention. In this context it should be noted that Greenland does not need to seek recognition. The Greenland Government needs only inform the Danish Government that a convention to which Denmark is a party should also apply to Greenland. The Danish Government will then request the relevant authorities to remove the territorial declaration. This comment may have implications also for the recommendation, cf. paragraph 82.

Re paragraph 52:

In order to avoid confusion, it is suggested to add "Greenlandic" before the mentioning of Ministries and Departments within the Greenland Government. This also applies to paragraph 73.

Re paragraph 61 :

The first sentence states that the Danish Defence *controls* military activity in Greenland.

According to the Constitution, a few areas such as foreign, security and defense policy and foreign exchange and monetary policy cannot be assumed by the Greenland Self Government. Accordingly, the Greenland Self-Government has not assumed legislative and administrative responsibility regarding foreign, security and defense policy issue, including issues regarding expansion or change in military activities in Greenland.

The Defence Agreement of 1951 between the Government of the United States and the Government of the Kingdom of Denmark concerning the defense of Greenland - pursuant to the North Atlantic Treaty – entitles the United States to establish and/or to operate such defence areas, which the United States and the Kingdom of Denmark, on the basis of NATO defence plans, from time to time agree to be necessary for the development of the defence of Greenland and the rest of the North Atlantic Treaty area, and which the Government of the Kingdom of Denmark is unable to establish and operate on its own. Within such established defence areas and the air space and waters adjacent thereto the United States is entitled to improve and generally to fit the area for military use; construct, install, maintain, and operate facilities and equipment; station and house personnel and provide for the protection and internal security of the area etc. For the present, the Thule Air Base is the only defence area operated by the US in Greenland.

However, in accordance with subsequent agreements between the Government of the United States and the Government of the Kingdom of Denmark, including the Greenland Government, regarding the American military presence in Greenland, the Government of the United States will consult and inform the Government of the Kingdom of Denmark, including the Greenland Government prior to the implementation of any significant changes to United States military operations or facilities in Greenland.

Further, in accordance with the Itilleq-declaration of 2003 between the Government of the Kingdom of Denmark and the Greenland Government and the Act on Self Government, the Government of the Kingdom of Denmark consults and cooperates closely with the Greenland Government in affairs of foreign and security policy of particular importance to Greenland.

Based on the above, we find that it would be more accurate to state that the Government of the Kingdom of Denmark in accordance with the Constitution *has the competence* in matters of defence, and to add that in accordance with the Itilleq-declaration of 2003 between the Government of the Kingdom of Denmark and the Greenland Government and the Act on Self Government the Government of the Kingdom of Denmark consults and cooperates closely with the Greenland Government in affairs of foreign and security policy of particular importance to Greenland.

Finally, the draft states that there are 33 bases and radar stations in Greenland established under the 1951-agreement. Some installations (bases, radars, weather stations) were established under the 1941-Agreement (Agreement between Denmark and the United States of America on the Defence of Greenland of 9 April 1941) (See: "DUPI, Grønland under den kolde krig, 1997, page 61). The 1941-agreement was succeeded by the 1951-agreement. The total number of installations varies according to definition of applicability. Therefore, it could be advised either to make a footnote to the stated number (33) with a reference to the source of the information or to write "a number of" instead.

Re paragraph 62:

Reference is made to the comments made to paragraph 61 and 67.

The paragraph refers to debates on the responsibilities for "cleaning hazardous waste accumulated". It is a fair statement that there is a debate, but in our view, it would be more accurate to refer to a debate on the responsibilities for "cleaning up of remains of former military presence as well as monitoring and safeguarding the corresponding landfills". In this respect, it could also be mentioned that the Danish Government has financed impact assessments of different landfills on the nearby sea through the program "Environmental support for the Arctic". In January 2018, the Danish Government and the Government of Greenland signed an agreement concerning clean up of former US military presence in Greenland to be financed by Denmark.

Re paragraph 63:

The following factual statement could be considered added: "The Danish Government, in cooperation with the Greenland Government, has initiated a number of studies to establish a fact based assessment of the remains and waste at Camp Century, including a programme for long-term climate monitoring, detailed one-time surveying of the debris field and measurements of radioactivity in samples of ice core material from Camp Century".

Re paragraph 64:

It is not for the Danish Government to comment on the position of the US Government, but it could be mentioned that the US Government has financed an arrangement with the Greenland Home Rule regarding the demolition and cleaning up when the US Government abandoned the DYE-stations in Greenland. Furthermore, the US Government conducted a clean up of Sdr. Strømfjord (Kangerlussuaq) under the supervision of the Greenland Home Rule when the US left this area. The two mentioned arrangements were based on agreements between the US Government and the Government of the Kingdom of Denmark including the Government of Greenland. The government of the Kingdom of Denmark granted a mutually agreed financial contribution to the Home Rule for environmental clean up at Dundas when that area was given up by the US Government at the request of the Home Rule.

Re paragraph 65:

In the last part of the paragraph mention is made of studies conducted by the Danish Health authorities, which did not identify the existence of specific health consequences. It would be correct to state that these studies were in fact a joint undertaking between the Danish authorities and the Greenland Home Rule Government. It is also mentioned that further studies *indicated* that the existing levels of radioactive contamination in the area do not pose risk. This wording may indicate that the studies were not conclusive or comprehensive. The studies, however, concluded that the existing levels did not pose a risk.

Pre paragraph 66:

With respect to the agreement between the Danish Government and the Greenland Government on the clean-up of former American military presence in Greenland, it should be mentioned that the agreement respects the parties' administrative responsibilities, as mentioned above in relation to paragraph 49

The report mentions that interlocutors have expressed concern that the funds allocated to undertake the clean-up will not be sufficient. In this connection, it should be added that the agreement recognizes that there may be a need to adjust the envisaged 6-year implementation period.

Re paragraph 67:

It is stated that full transparency is crucial to dissipate the tensions that had emerged over years of covert operations. This statement is clearly factually correct but could be understood to state that there is not yet agreement on achieving transparency within this area. The agreement made between the Danish Government and the Greenland Government on the clean-up, however, is to be implemented *in cooperation* between Danish and Greenlandic authorities and specifically aims to ensure transparency and publicity on these matters.

The draft report prescribes that States must ensure the disposal of contaminated war debris, unexploded ordnance and military equipment in a manner that is consistent with international environmental standards. This sentence in the context of the paragraph could be read to state that the Kingdom of Denmark is not fulfilling its responsibilities. In this context it would be important to underline that the agreement between the Danish Government and the Greenland Government on the clean-up underlines the commitment of both parties to ensure that this waste is disposed properly. Furthermore, according to our information there is no example of contaminated war debris or unexploded ordnance that has been left unattended. In cases of unexploded ordnance, the Danish military will undertake the clean-up upon request by the police.

The draft report indicates that additional concerns remain among Greenlanders regarding the use of the island as part of the anti-missile shield and the potential risks associated with this. In this context it is important to note the 2004-agreement between the Government of the United states of America and the Government of the Kingdom of Denmark including the Greenland Government on amendment and supplementing the Defense Agreement in view of inter alia the incorporation of the Thule Airbase in the US Ballistic Missile Early Warning System. The Greenland Government co-signed the agreement.

Furthermore, it should be noted that the Greenlandic people is represented through the representative democratic institutions in both the Kingdom of Denmark and in Greenland. See also the comments to paragraph 49.

The comments provided in relation to this paragraph as well as previous paragraphs, particularly paragraphs 61 and 66 may give rise to reconsider the draft recommendations in paragraph 84 c).

Re paragraph 71:

We suggest the following minor edits to the paragraph:

"Adopted in 2009 and entered into force by 1 January 2010, the Mineral Resource Act is the framework legislation for all activities related to mineral and hydrocarbon exploration and exploitation. The adoption of the legal and institutional framework governing the mineral resource area, e.g. mining activities, in Greenland was one of the significant consequences of the adoption of the Act on Greenland Self-Government also in 2009 that enabled the Self-Government to take over this area among others."